

AIR TRANSPORT SERVICES

*Agreement signed at Rio de Janeiro September 6, 1946, with annex,
protocol of signature, and schedules*

Entered into force October 6, 1946

*Route schedules amended by agreements of December 30, 1950;¹ De-
cember 1, 1958;² and December 10, 1968³*

61 Stat. 4121; Treaties and Other
International Acts Series 1900

AIR TRANSPORT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED STATES OF BRAZIL

The Government of the United States of America and the Government of the United States of Brazil, considering:

—that the ever-growing possibilities of commercial aviation are of increasing importance;

—that this means of transportation because of its essential characteristics, permitting rapid connections, provides the best means for bringing nations together;

—that it is desirable to organize in a safe and orderly form regular international air services, without prejudice to national and regional interests, having in mind the development of international cooperation in the field of air transport;

—that it is necessary to conclude an agreement to secure regular air communications between the two countries

have appointed for this purpose their Plenipotentiaries as follows:

The President of the United States of America, His Excellency William Douglas Pawley, Ambassador Extraordinary and Plenipotentiary in Brazil, and His Excellency James McCauley Landis, Chairman of the Civil Aeronautics Board;

The President of the United States of Brazil, His Excellency Samuel de Sousa-Leão Gracie, Acting Minister for Foreign Affairs and His Excellency Major-Brigadier Armando Figueira Trompowsky de Almeida, Minister of State for Aeronautics;

¹ 2 UST 460; TIAS 2190.

² 9 UST 1468; TIAS 4143.

³ 20 UST 658; TIAS 6672.

who, after having exchanged their full powers, found to be in good and due form, agreed upon the following articles:

ARTICLE I

The Contracting Parties grant each other the rights specified in the Annex hereto, in order that there may be established the regular air services described therein (hereinafter referred to as "agreed services").

ARTICLE II

1—Each of the agreed services may be inaugurated immediately or at a later date, at the option of the Contracting Party to whom the rights have been granted, but not before:

(a) the Contracting Party to whom the rights have been granted shall have designated an airline or airlines for the route or routes specified;

(b) the Contracting Party granting the rights shall have given the necessary operating permission to the airline or airlines concerned (which it shall do without delay, in accordance with the provisions of paragraph 2 of this article and of Article VI).

2—The airlines so designated may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights, that they are in a position to fulfill the requirements prescribed by the laws and regulations normally applied by these authorities to the operation of commercial airlines.

ARTICLE III

1—The charges which either of the Contracting Parties impose or permits to be imposed on the airline or airlines designated by the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

2—Fuel, lubricating oils, and spare parts introduced into the territory of one Contracting Party or placed on board airplanes in its territory by the other Contracting Party, either for its own account or for the airlines designated by it, solely for use by the aircraft of the other Contracting Party, shall enjoy, with respect to customs duties, inspection fees and other charges imposed by the first Contracting Party, treatment not less favorable than that granted to the national airlines engaged in international air transport services or to the airlines of the most favored nation.

3—Aircraft of one of the Contracting Parties used in the operation of the agreed services and the supplies of fuel, lubricating oils, spare parts, normal equipment and aircraft stores retained on board such aircraft shall enjoy exemption from customs duties, inspection fees, and similar duties or charges in the territory of the other Contracting Party, even though these supplies be used by such aircraft on flights within that territory.

ARTICLE IV

Certificates of airworthiness, certificates of competency and licenses issued or validated by one of the Contracting Parties and still in force, shall be recognized as valid by the other Contracting Party for the purpose of the operation of the agreed services. Each Contracting Party reserves the right however to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to their own nationals by another State.

ARTICLE V

1—The laws and regulations of one Contracting Party, relative to the entry into its own territory, or departure therefrom of aircraft employed in international air navigation or to the operation of such aircraft within its own territory, shall be applied to aircraft of the airline or airlines of the other Contracting Party.

2—The laws and regulations of one Contracting Party as to the admission into its own territory or the departure therefrom of passengers, crew or cargo of aircraft (i.e., regulations relative to entry, clearance, immigration, passports, customs and quarantine) shall be applied to passengers, crew and cargo of aircraft of the airline or airlines designated by the other Contracting Party, within the territory of the first Contracting Party.

ARTICLE VI

Each of the Contracting Parties reserves the right to withhold or revoke the exercise of rights specified in the Annex of the present Agreement by an airline designated by the other Contracting Party when it is not satisfied that substantial ownership and effective control of the airline under reference is in the hands of nationals of the other Contracting Party, or in case of failure by that airline to comply with the laws or regulations referred to in Article V above, or to fulfill the conditions under which the rights are granted in accordance with this Agreement and its Annex, or when planes put in operation are not manned by nationals of the other Contracting Party, except in cases where air crews are being trained.

ARTICLE VII

The present Agreement shall be registered with the Provisional International Civil Aviation Organization established by the Interim Agreement on International Civil Aviation signed in Chicago on December 7, 1944,⁴ or its successor.

ARTICLE VIII

If either of the Contracting Parties considers it desirable to modify the terms of the Annex to this Agreement, as well as to exercise the rights specified

⁴ EAS 469, vol. 3, p. 929.

in Article VI, it may request consultation between the aeronautical authorities of the two Contracting Parties, such consultation to be initiated within a period of 60 days from the date of the request. When these authorities agree that the Annex should be modified, or choose to exercise the rights set forth in Article VI, such decisions shall enter into force after having been confirmed by an exchange of notes through diplomatic channels.

ARTICLE IX

Except as otherwise provided in this Agreement, or its Annex, any dispute between the Contracting Parties relative to the interpretation or application of this Agreement, or its Annex, which cannot be settled through consultation shall be submitted for an advisory report to the Interim Council of the Provisional International Civil Aviation Organization (in accordance with the provisions of Article III, Section 6(8) of the Provisional Agreement on International Civil Aviation signed at Chicago on December 7, 1944) or to its successor, unless the Contracting Parties agree to submit the dispute to an Arbitration Tribunal designated by agreement between the same Contracting Parties, or to some other person or body. The Contracting Parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such report.

ARTICLE X

If a general multilateral aviation convention, accepted by both Contracting Parties, enters into effect, this Agreement shall be modified in such a way so that its provisions will conform to those of the convention under reference.

ARTICLE XI

For the purposes of the present Agreement, and its Annex, except where the text provides otherwise:

(a) the term "aeronautical authorities" shall mean in the case of the United States of America the Civil Aeronautics Board and any person or agency authorized to perform the functions exercised at the present time by the Civil Aeronautics Board and, in the case of the United States of Brasil, the Air Minister and any person or agency authorized to perform the function exercised at present by the said Minister.

(b) the term "designated airlines" shall mean those airlines that the aeronautical authorities of one of the Contracting Parties have communicated in writing to the aeronautical authorities of the other Contracting Party that they are the airlines that it has designated in conformity with Article II of the present Agreement for the routes specified in such designation.

(c) the term "territory" shall have the meaning given to it by Article 2 of the Convention on International Civil Aviation, signed at Chicago on December 7, 1944.⁵

(d) the definitions contained in paragraphs *a*, *b* and *d* of Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944, shall be applied to the present Agreement.

ARTICLE XII

Either of the Contracting Parties may at any time notify the other of its intention to terminate the present Agreement. Such a notice shall be sent simultaneously to the Provisional International Civil Aviation Organization or its successor. In the event such communication is made, this Agreement shall terminate six (6) months after the date of receipt of the notice to terminate, unless by Agreement between the Contracting Parties the communication under reference is withdrawn before the expiration of that time. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed as having been received 14 days after its receipt by the Provisional International Civil Aviation Organization or its successor.

ARTICLE XIII

The present Agreement supersedes any acts, permissions, privileges or concessions already in existence at the time of the signing, granted for any reason by any of the Contracting Parties in favour of airlines of the nationality of the other Contracting Party.

ARTICLE XIV

The present Agreement will come into force thirty (30) days after the date of its signature.

In witness whereof the undersigned Plenipotentiaries have signed the present Agreement and affixed thereto their respective seals.

Done in the city of Rio de Janeiro on the sixth day of September, 1946, in two copies, in the Portuguese and English languages, both texts being equally authentic.

WILLIAM D. PAWLEY [SEAL]

JAMES M. LANDIS

AMANDO TROMPOWSKY [SEAL]

S. DE SOUSA-LEAO GRACIE

⁵ TIAS 1591, *ante*, vol. 3, p. 944.

ANNEX

SECTION I

The Government of the United States of Brazil grants to the Government of the United States of America the right to conduct air transport services by one or more air carriers of American nationality designated by the latter country on the routes, specified in Schedule I attached, which transit or serve commercially the territory of the United States of Brazil.

SECTION II

The Government of the United States of America grants to the Government of the United States of Brazil the right to conduct air transport services by one or more air carriers of Brazilian nationality designated by the latter country on the routes, specified in Schedule II attached, which transit or serve commercially the territory of the United States of America.

SECTION III

One or more air carriers designated by each of the Contracting Parties under the conditions provided in this Agreement will enjoy, in the territory of the other Contracting Party, rights of transit, of stops for non-traffic purposes and of commercial entry and departure for international traffic in passengers, cargo and mail at the points enumerated and on each of the routes specified in the schedules attached at all airports open to international traffic.

SECTION IV

The appropriate aeronautical authorities of each of the Contracting Parties will consult from time to time, or at the request of one of the Parties, to determine the extent to which the principles set forth in Section V below are being followed by the airlines designated by the Contracting Parties, so as to prevent an unfair proportion of traffic being diverted from any designated airline through violation of those principle or principles enunciated elsewhere in this Agreement, the Annex, or the Protocol of Signature.

SECTION V

It is agreed between the Contracting Parties:

- a) that the air transport capacity offered by the carriers of both countries should bear a close relationship to traffic requirements.
- b) that in the operation of common sections of trunk routes the air carriers of the Contracting Parties should take into account their reciprocal interests so as not to affect unduly their respective Services.
- c) that the services provided by a designated air carrier under this Agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of

which such air carrier is a national and the country of ultimate destination of the traffic;

d) that the right to embark and to disembark at points in the territory of the other country international traffic destined for or coming from third countries at a point or points specified in the Schedules attached, shall be applied in accordance with the general principles of orderly development to which both government subscribe and shall be subject to the general principle that capacity shall be related:

1—to traffic requirements between the country of origin and the countries of destination;

2—to the requirements of through airline operation, and

3—to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

SECTION VI

It is agreed between the Contracting Parties that, where the onward carriage of traffic by an aircraft of different size from that employed on the earlier stage of the same route (hereinafter referred to as "change of gauge") is justified by reason of economy of operation, and where such change of gauge is to be made at a point in the territory of the United States of America or the United States of Brazil, the smaller aircraft will operate only in connection with the larger aircraft arriving at the point of change, so as to provide a connection service which will thus normally wait on the arrival of the larger aircraft, for the primary purpose of carrying onward those passengers who have travelled to the United States of America or the United States of Brazil in the larger aircraft to their ultimate destination in the smaller aircraft. It is likewise understood that the capacity of the smaller aircraft shall be determined with primary reference to the traffic travelling in the larger aircraft normally requiring to be carried onward. Where there are vacancies in the smaller aircraft such vacancies may be filled with passengers from the United States of America or the United States of Brazil respectively without prejudice to the local traffic, exclusive of cabotage.

SECTION VII

a) The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service.

b) The rates to be charged by the air carriers of either Contracting Party between points in the territory of the United States and points in Brazilian territory referred to in the attached Schedules shall, consistent with the provisions of the present Agreement and its Annex, be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall

act in accordance with their obligations under the present Annex, within the limits of their legal powers.

c) Any rate proposed by the air carrier or carriers of either Contracting Party shall be filed with the aeronautical authorities of both Contracting Parties at least thirty days before the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both Contracting Parties.

d) The Civil Aeronautics Board of the United States having approved the traffic conference machinery of the International Air Transport Association (hereinafter called IATA), for a period of one year beginning in February 1946, any rate agreements concluded through this machinery during this period and involving United States air carriers will be subject to approval of the Board. Rate agreements concluded through this machinery may also be required to be subject to the approval of the aeronautical authorities of the United States of Brazil pursuant to the principles enunciated in paragraph (b) above.

e) The Contracting Parties agree that the procedure described in paragraphs (f), (g) and (h) of this Section shall apply

1—If during the period of the Civil Aeronautics Board's approval of the IATA traffic conference machinery, either any specific rate agreement is not approved, within a reasonable time by either Contracting Party or a conference of IATA is unable to agree on a rate, or

2—at any time no IATA machinery is applicable, or

3—if either Contracting Party at any time withdraws or fails to renew its approval of that of the IATA traffic conference machinery relevant to this Section.

f) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers of services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party from becoming effective, if in the judgement of the aeronautical authorities of the Contracting Party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic.

If one of the Contracting Parties on receipt of the notification referred to in paragraph (c) above is dissatisfied with the rate proposed by the air carrier or carriers of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to,

and the Contracting Parties shall endeavour to reach agreement on the appropriate rate.

In the event that such agreement is reached, each Contracting Party will exercise its best efforts to put such rate into effect as regards its air carrier or air carriers.

If agreement has not been reached at the end of the thirty day period referred to in paragraph (c) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its application, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (h) below.

g) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties is dissatisfied with any rate proposed by the air carrier or carriers of either Contracting Party for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty day period referred to in paragraph (c) above, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate.

In the event that such agreement is reached each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers.

It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

h) When in any case under paragraph (f) and (g) above the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the air carrier or carriers of the other Contracting Party, upon the request of either, both Contracting Parties shall submit the question to the Provisional International Civil Aviation Organization or its successor for an advisory report, and each Party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

SECTION VIII

Changes made by either Contracting Party in the routes described in the Schedules attached except those which change the points served by these airlines in the territory of the other Contracting Party shall not be considered as modifications of the Annex. The aeronautical authorities of either Contracting Party may therefore proceed unilaterally to make such changes, provided, however, that notice of any change is given without delay to the aeronautical authorities of the other Contracting Party.

If such other aeronautical authorities find that, having regard to the prin-

ciples set forth in Section V of the present Annex, interests of their air carrier or carriers are prejudiced by the carriage by the air carrier or carriers of the First Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country, the authorities of the two Contracting Parties shall consult with a view to arriving at a satisfactory agreement.

SECTION IX

After the present Agreement comes into force, the aeronautical authorities of both Contracting Parties will exchange information as promptly as possible concerning the authorizations extended to their respective air carriers designated to render service on the route mentioned in the annexed schedules or any part thereof. This will specially include copies of authorizations granted together with such modifications as may occur and any annexes.

PROTOCOL OF SIGNATURE

It appeared in the course of negotiations leading up to the conclusion of the Agreement on air services between the United States of America and the United States of Brazil signed at Rio de Janeiro today that the representatives of the two Contracting Parties were in agreement on the following points:

1—The air carriers of the two Contracting Parties operating on the routes described in the Annex of said Agreement shall enjoy fair and equal opportunity for the operation of the said routes.

2—When it is verified to be temporarily impossible for the carrier or carriers of one of the Contracting Parties, on a route, to take equal advantage of the opportunities referred to in 1, above, the situation thus arising will be mutually examined by both Governments for the purpose of assisting the said carrier or carriers to increasingly participate in the services contemplated on a fair and equitable basis.

3—It is recognized that the determination of tariffs to be applied by an air carrier of one Contracting Party between the territory of the other Contracting Party and a third country is a complex question, the overall solution of which cannot be sought through consultation between only two countries. It is noted, furthermore, that the method of determining such tariffs is now being studied by the Provisional International Civil Aviation Organization. It is understood under these circumstances:

a)—That, pending the acceptance by both parties of any recommendations which the Provisional International Civil Aviation Organization may make after its study of this matter, such tariffs shall be subject to consideration under the provisions of Section V (b) of the Annex to the Agreement.

b)—That in case the Provisional International Civil Aviation Organization fails to establish a means of determining such rates satisfactory to both

Contracting Parties, the consultation provided for in Article VIII of the Agreement shall be in order.

SCHEDULE I ⁶

AMERICAN ROUTES TO BRAZIL AND ACROSS BRAZILIAN TERRITORY

Part 1. *To Brazil:*

a) From the United States of America, via intermediate points in the Caribbean, South America, to Manaus-Goiania and Rio de Janeiro or São Paulo; in both directions.

Remark: While the route Manaus-Goiania-Rio de Janeiro is not ready for international operation, it will be replaced by the following route: "From the United States of America, via intermediate points in the West Coast of South America, to Campo Grande, São Paulo and Rio de Janeiro; in both directions."

Part 2. *Across Brazil:*

a) From the United States of America, via intermediate points in the Caribbean and South America, to Belém, Natal and beyond to Africa; in both directions. (In the event meteorological conditions in the North Atlantic so require, this route may be used also to Europe).

b) From the United States of America via intermediate points in the Caribbean and South America, to Belém-Barreiras-Rio de Janeiro-São Paulo, Pôrto Alegre and beyond; in both directions.

c) From the United States of America via intermediate points in the Caribbean, South America, to Manaus, Goiânia, Guaira and beyond, in both directions.

Remark: This route shall be put into operation only when the Manaus-Goiania-Rio de Janeiro route is ready.

SCHEDULE II ⁶

BRAZILIAN ROUTES TO THE UNITED STATES OF AMERICA AND ACROSS AMERICAN TERRITORY

1st Part—*To the United States of America:*

1. From the United States of Brazil, via intermediate points in South America and in the Caribbean, inclusive of Puerto Rico, to New York or Washington, (alternative), in both directions.

2. From the United States of Brazil, via intermediate points in South

⁶ For amendments to route schedules, see agreements of Dec. 30, 1950 (2 UST 460; TIAS 2190), Dec. 1, 1958 (9 UST 1468; TIAS 4143), and Dec. 10, 1968 (20 UST 658; TIAS 6672).

America and in the Caribbean, inclusive of Puerto Rico, to Miami and Chicago, in both directions.

3. From the United States of Brazil, via intermediate points in South America and in the Caribbean, inclusive of Puerto Rico, to Miami and New Orleans, in both directions.

2nd Part—Across the United States of America:

1. From the terminal points named in the routes mentioned above by any reasonably direct route to points in third countries, in both directions.